SUPREME COURT, U. S.

MAY 9 1967

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1374~~ 1146

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

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TABLE OF CONTENTS

	PAGE
Jurisdiction	1
Questions Presented for Review	2
Point System Regulation of New Jersey Division of Motor Vehicles	2
Constitutional Provisions Involved	3
Statement of the Case	3
How the Federal Questions Were Raised	7
Reasons for Granting the Writ	7
This Controversy Involves More Than a Single Suspension	7
The Suspension Order Is Invalid on Its Face	8
No Imminent Danger	9
The Subsequent "Hearing" Did Not Cure Constitutional Defects in the Suspension Order	10
The Appellate Division Denied Due Process in Holding That There Was a Hearing But Refusing to Review Its Decision	11
The Notice of Suspension Was Insufficient	12
A "Due Process" Hearing on Proper Notice Would Show Continuous Arbitrary Action for Minor Violations	13
The Point Rule Is Invalid on Its Face	14
Double Jeopardy	15
Judgment and Record	16
Conclusion	16
Appendix	17
Opinion of the Appellate Division	17

Cases Cited

PAGE

American Railway Express v. Levee (1923), 263 U. S. 19, 44 S. C. Rep. 11 2

Armstrong v. Manzo (1965), 380 U. S. 545, 85 S. C. Rep. 1187 ..... 9, 11

Bechler v. Parsekian, 36 N. J. 242 (1961) 3

Chicago B & Q Railway v. Chicago, 166 U. S. 227, 17 S. C. Rep. 581 7

Chicago M. St. Paul Ry. v. Minnesota, 134 U. S. 418, 10 S. C. Rep. 462-467 14

Cresse v. Parsekian, 43 N. J. 326 (1964) 12

Liner v. Jafco (1964), 375 U. S. 301, 306, 84 S. C. Rep. 391-394 8

Morgan v. United States (1938), 304 U. S. 1, 58 S. C. Rep. 773 14

Southern Railway Co. v. Virginia, 290 U. S. 190, 54 S. C. Rep. 148 ..... 9, 10, 11

State v. Farmer (1966), 48 N. J. 145 p. 168 16

State v. Ring, 85 N. J. Super 341 ..... 13, 15

Statutes and Rules

28 U.S.C. Section 1257 (c) 2

NJS 39:4-88 10

NJC 39:5-31 ..... 13, 15

NJC 39:5-30 and 32 ..... 14, 15, 16

NJC 39:4-144 15

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

Petitioner, John E. Ring, prays that a writ of certiorari issue to review a final judgment of the Appellate Division of the Superior Court of the State of New Jersey.

The opinion of the Appellate Division dated March 8, 1967 has not been published. A copy is printed herein at page 17.

Jurisdiction

The judgment of the Appellate Division sought to be reviewed was entered March 8, 1967. A petition for further review was denied by the Supreme Court of New Jersey May 2nd, 1967.

There has been no application for rehearing and no extension of time within which to file this petition.

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1257 (C). Denial by the Supreme Court of the State of New Jersey of a petition for further review made the judgment of the Appellate Division a final judgment of the highest Court in New Jersey on which a decision can be had.

American Railway Express v. *Levee* (1923), 263 U. S. 19, 44 S. C. Rep. 11.

Questions Presented for Review

1. Are the point system rule and the summary suspension order issued thereunder on June 27, 1966 summarily suspending petitioner's driver's license for three months without prior notice and hearing void as violations of the provisions relating to unreasonable seizure, double jeopardy, unusual punishments, due process and equal protection of the laws as provided in the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution?

2. Were the same provisions of the United States Constitution or any of them violated by the holding of the Appellate Division that any defect in the original summary suspension order was cured by the subsequent hearing in the Division of Motor Vehicles?

Point System Regulation of New Jersey Division of Motor Vehicles

"Restoration after suspension or official warning * * * shall be with the express condition and understanding that conviction of any violation of the motor vehicle

laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the follow-periods:

(a) When the violation occured within six months of the date of action—three months."

Constitutional Provisions Involved

A review sought in this case involves due process and equal protection of the laws, double jeopardy, unreasonable seizure and unusual punishments under the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

Statement of the Case

References are to exhibits in the appendix to the petitioner's brief in the Appellate Division, nine copies of which are submitted with this petition.

Petitioner, a resident of New Jersey, was fined $10 for a traffic violation in New York City in October, 1965.

Nine months later, on June 27, 1966, his New Jersey automobile driver's license was summarily suspended for three months without any hearing because of the above offense in New York (Ex. 1).

Petitioner, who earns his living as a truck driver, would lose over $1,200 in wages and he challenged the validity of the suspension under *Bechler* v. *Parsekian*, 36 N. J. 242 (1961), in which the N. J. Supreme Court said (p. 257):

> "In today's society a license to operate an automobile may be of vital significance and value to the licensee and may not be taken away except by due process."

The Division of Motor Vehicles advised that he could have a hearing and could drive in the meantime. However,

the suspension was put through without his knowledge and he was arrested and held in $300 bail for driving his truck while on the suspended list on July 9, 1966. Thereafter, the Division of Motor Vehicles set a hearing for July 27th, but ruled that the petitioner could not drive in the meantime (Ex. 4).

Upon receipt of such notice, petitioner filed a notice of appeal to the Appellate Division of the Superior Court July 27th on the ground that the suspension order was invalid because issued without and prior to a hearing (Ex. 5). Petitioner was in a dilemma because he needed his driver's license to make a living, and under Rule 4:88-14 he could not maintain the appeal to the Appellate Division unless all rights of administrative review had been exhausted. He attended the hearing on July 27th. No evidence was taken or offered by either party except an affidavit by petitioner (Ex. 8), which set forth the circumstances of the New York violation and which stated:

> "My attorney filed an appeal in the Appellate Division to preserve my claim that the order of revocation is void as a denial of due process because it was issued before a hearing as required,"

and:

> "I am attending this hearing July 27th to *reduce the suspension* and *regain my license* without waiving my claim that the suspension order was void. For the same reason I, in good faith, retained my license and surrender it herewith without waiving right of appeal."

Petitioner did not submit on the merits on the right to suspend and the affidavit stated:

> "A *hearing before suspension* would have shown that the New York violation was evidence that I was a careful driver and does not prove that I need to be re-

> formed now after nine months of subsequent safe driving,"

and urged that the order of suspension be rescinded and his license returned not on the merits but "as inadvertently issued" because issued without a hearing.

On August 19th the Appellate Division, after the hearing but before a decision thereon and after six weeks of suspension and loss of wages, stayed all proceedings pending final determination on the appeal (Ex. 9).

Notwithstanding the stay, the Division of Motor Vehicles on September 8th (Ex. 10) affirmed the three-month suspension by a letter which noted the stay, but its effect was a claim of six weeks more suspension if the appeal was lost. The letter of September 8th states:

> "Your petition for a reduction of the period of suspension is denied,"

showing clearly that both petitioner and Division of Motor Vehicles regarded the hearing as only a petition for reduction of suspension time in order to regain his license pending the appeal, a result which had already been accomplished by the Court's order staying the suspension.

Petitioner had forty-five days until October 23rd to file a notice of appeal from the September 8th letter of affirmance, if the affirmance was proper in view of the stay of proceedings. Petitioner did not file a second formal notice of appeal, but to avoid a charge that he did not avail himself of every opportunity to protect his rights, he did on October 19th, within the forty-five days, perfect an appeal by serving and filing in the Appellate Division a brief and an appendix record of all proceedings from the June 27, 1966 order of summary suspension up to and including the September 8, 1966 letter of affirmance, which included the petitioner's affidavit (Ex. 8), the only evidence offered by either party at the hearing.

On December 16th, three months after the September 8th decision and two months after the petitioner served and filed his brief and record, the respondent served on petitioner a notice and copy of documents purporting to be the record of proceedings under review. The documents included three prior equally illegal summary suspensions dated September 28, 1964, three months; October 23, 1964, extending the suspension to four months; and February 4, 1965, extending the suspension to ten months.

None of these three suspensions had been noted in the June 27, 1966 order of suspension now under review nor had they been noted or offered as evidence on the July 27th hearing.

On March 8, 1967 the Appellate Division affirmed the three-month suspension of June 27, 1966. It held that though the suspension order might have been void initially, any constitutional defects of lack of due process were cured by the subsequent so-called hearing of July 27th.

The Court refused to review the hearing record for the petitioner because he had not filed a second formal notice of appeal (p. 20).

The Court reviewed the record for the benefit of the respondent and held (p. 21):

> "There was sufficient substantial evidence to support the June 27th suspension,"

that evidence constituting four prior illegal summary suspensions not noted or offered in evidence at the hearing.

The five illegal suspensions would cause the petitioner to lose his license nearly eighteen months out of thirty-six months between August, 1963 and August, 1966, with a loss of about $9,000 wages out of a possible $18,000, and he is still subject to a further suspension of six weeks.

How the Federal Questions Were Raised

The notice of appeal to the Appellate Division and the affidavit submitted to the Motor Vehicle Bureau at the July 27th hearing (Exs. 5 and 8) claim invalidity of the suspension for lack of a hearing. The opinion of the Appellate Division states (p. 18):

> "It was, and still is, Ring's position that the suspension was improper because it was ordered first without giving him a hearing."

Petitioner's brief in the Appellate Division raised defense of double jeopardy and other points.

All the constitutional questions were submitted to the Supreme Court of New Jersey in the same form as here submitted in the petition for certification for further review, which was denied May 2nd, 1967.

Chicago B & Q Railway v. *Chicago,* 166 U. S. 227, 17 S. C. Rep. 581.

Reasons for Granting the Writ

This Controversy Involves More Than a Single Suspension.

The public and the petitioner have an interest in a decision of this Court, which exists apart from the suspension under review. It is submitted that the evidence of four prior summary suspensions does not justify the present suspension, but shows a definite policy of the Division of Motor Vehicles of illegal seizure and to circumvent due process and equal protection of the laws.

Not only has the petitioner lost eighteen months and $9,000 wages without due process, but he is a truck driver who may drive 500 or 600 miles a week in different states and strange territories. Under the rule it is possible for him to be deprived of his license three out of every six

months for simple $10 traffic violations in other states as in this case, without ever a notice or hearing and without any help from the Courts of New Jersey.

Mass summary suspensions are now issued in New Jersey as a result of modern techniques and computers regardless of due process or of the circumstances. Few of the licensees can afford the expense of legal proceedings, or get the legal machinery to work before the suspension expires, in view of the opinion of the Appellate Division in this case that a hearing one month and a decision thereon within ten weeks after summary suspension is due process even where there is no imminent danger.

All these illegal summary suspensions on the driving record of the petitioner in the Division of Motor Vehicles have substantially increased his insurance premiums, though he has caused no personal or property damage.

This policy of issuing such summary suspensions tends to frustrate constitutional due process, and the lack of a ruling by this Court:

> "may effectively dispose of petitioner's rights and render entirely illusory his right to review here as well as his right to a hearing,"

Liner v. *Jafco* (1964), 375 U. S. 301, 306, 84 S. C. Rep. 391-394.

The Suspension Order Is Invalid on Its Face.

The opinion of the Appellate Division said (p. 20):

> "Ring filed no notice of appeal from the order made by the Division of Motor Vehicles on September 8, 1966 following the hearing. The only notice of appeal filed by him was that of July 25, 1966 which was addressed solely to the summary suspension order of June 27, 1966. Ring claimed that order was invalid because no hearing had been accorded him before it

was made. Therefore, the only appeal properly before us is that relating to the June 27, 1966 order which was issued without a hearing."

On that statement, the only record before the Appellate Division was the notice of appeal (Ex. 5) and the summary suspension order (Ex. 1), and the Appellate Division should have set it aside as invalid on its face, under *Armstrong* v. *Manzo* (1965), 380 U. S. 545, 85 S. C. Rep. 1187, which held that any deprivation of life, liberty or property must be *preceded* by notice and opportunity for hearing appropriate to the nature of the case.

No Imminent Danger

This Court has sustained summary action where there is "imment danger," *Southern Railway Co.* v. *Virginia*, 290 U. S. 190, 54 S. C. Rep. 148.

There was no pretense of such showing here and such showing is precluded by the fact that the only possible evidence would be that of the police officer in New York who saw no imminent danger and issued a summons returnable several days later. The Division of Motor Vehicles took no action for nine months.

There was uncontradicted evidence that the petitioner (p. 19):

> "had driven several thousand miles during the eight months between the New York incident and the date of the suspension order without causing an accident and without having caused personal injury or property damage to anyone,"

and (p. 19):

> "had driven his truck from the right eastbound lane into the left eastbound lane because he intended to

> make a left turn at the intersection and deemed his driving maneuver compatible with safe driving."

Such a maneuver is neither dangerous nor illegal under New Jersey law which provides, NJS 39:4-88, that a licensee must drive in the right lane except when preparing to make a left turn.

The Appellate Division held there can be summary suspension (p. 23):

> "where in the administrative agency's judgment the protection of the public requires the immediate cessation of activities under the license."

An administrative officer may not be empowered, without notice or hearing, to act:

> "on his own opinion and ordain the taking of private property,"

and such an order or judgment:

> "without evidence is arbitrary and baseless,"

and is void:

> "if contrary to the undisputable character of the evidence,"

Southern Railway Co. v. *Virginia* (*supra*).

The Subsequent "Hearing" Did Not Cure Constitutional Defects in the Suspension Order.

The Appellate Division held that due process is satisfied with a hearing one month after summary suspension (p. 23) and a decision on the hearing six weeks later, and that such hearing cured any constitutional defects of denial of due process. In this case, the subsequent hearing was under the control of the Director of Motor Vehicles,

who was both prosecutor and judge, who formulated and is dedicated to the point system rule, and could not possibly consider the case objectively. The Director could hardly be expected to rule ten weeks after summary suspension, that there was no evidence or grounds for suspension in the first place, and such a ruling, if possible, would not provide compensation for lost wages.

As for loss of wages, the Appellate Division merely referred to pending legislation that would limit summary suspensions to non-occupational drivers. That would not help this petitioner and would no doubt violate the equal protection clause.

Administrative orders of a quasi judicial character are void:

> "if a hearing is denied; if granted was manifestly unfair,"

Southern Railway Co. v. *Virginia (supra).*

A hearing after summary suspension to show why the suspension should be set aside, or the period of suspension reduced, shifts the burden which may be decisive of the outcome and does not cure the defect of denial of due process.

Only by setting aside the order of summary suspension can "due process" be restored to the petitioner, *Armstrong* v. *Manzo* (*supra*).

The Appellate Division Denied Due Process in Holding That There Was a Hearing But Refusing to Review Its Decision.

Though petitioner did not file a second formal notice of appeal within forty-five days after the September 8th decision, he did perfect an appeal by filing a brief and record within that time, on October 19th, to avoid the charge that he failed to take every step to protect his rights. The

Court's refusal to review the hearing for the petitioner (p. 20) is a violation of the rule that due process is a matter of substance, not form, because the petitioner had perfected an appeal in time.

But the Appellate Division did review the proceedings for the respondent, to find that there had been a hearing which cured the lack of due process (p. 20), and found that the suspension was justified by four previous illegal suspensions (p. 21), which had neither been mentioned in the notice nor mentioned or offered in evidence at the hearing.

The Notice of Suspension Was Insufficient.

In *Cresse* v. *Parksekian*, 43 N. J. 326 (1964), the Court affirmed a reversal by the Appellate Division of the suspension by the Director of Motor Vehicles, because there had been insufficient notice and directed:

> "an individual hearing in the manner called for by the Appellate Division (81 N. J. Super. at p. 594)."

The notice in the present case stated:

> "PERSISTENT VIOLATOR—You have again been convicted after restoration with distinct understanding.
>
> Subsequent conviction in the New York Court as a result of a Failure to keep right violation on October 25, 1965.
>
> PERIOD OF SUSPENSION: Effective July 2, 1966 and 3 MONTHS from the date your driver license is received at this office."

The petitioner went to the hearing prepared to explain only the New York violation, to obtain his license during the appeal. The Appellate Division nevertheless found (p. 21) that the suspension was justified because of four prior equally illegal summary suspensions, none of which

was stated as grounds for the suspension in the notice and none of which was mentioned or offered in evidence at the hearing.

A "Due Process" Hearing on Proper Notice Would Show Continuous Arbitrary Action for Minor Violations.

A hearing on proper notice of all prior summary suspensions relied upon by the Appellate Division would show that:

Each had been preceded by a due process trial in which the State, under NJS 39:5-31, had an opportunity to seek suspension, if warranted by the evidence, as well as other punishment. In the four cases, the Court found suspension warranted only in the third case, and for thirty days.

On the first conviction of speeding, the Division of Motor Vehicles thereafter suspended for six months, and after the six months expired the conviction was reversed in the Appellate Division, *State* v. *Ring,* 85 N. J. Super. 341 (1964), and the charge subsequently dismissed. Petitioner was thus illegally deprived of six months' wages with no compensation. Since there should have been no suspension on August 29, 1963, there should have been no "restoration after suspension" to put the point rule in operation on February 29, 1964.

Yet that "restoration date" started a chain reaction of summary suspensions and restoration dates which has kept the point rule in continuous operation to date.

Otherwise, there would have been four simple violations, three in New Jersey and one in New York, which had been amply punished by the Courts. On the three convictions in New Jersey, the Division of Motor Vehicles subsequently arbitrarily and without hearing suspended three months, one month and six months respectively, which together with the three months on the present suspension and six months on the reversed conviction totals eighteen months

out of thirty-six months between August, 1963 and August, 1966.

There will be a restoration date sometime late in 1967 or early in 1968 following the remaining six weeks of suspension, which will put the point rule in operation against the petitioner for another year, until sometime in 1969.

A $10 technical violation in New York is not sufficient reason to classify the petitioner separate and apart from other New Jersey licensees, to make him subject to summary suspension three or four years later, and to do so violates the equal protection clause.

The Point Rule Is Invalid on Its Face.

The Appellate Division held that the point rule is a *reasonable* exercise of the power vested in the Division of Motor Vehicles under NJS 39:5-30 and 32.

Section 39:5-30 provides that it may be revoked by the Director of Motor Vehicles:

> "for a violation of any provision of this sub-title or on *any other reasonable* grounds after due notice in writing of such proposed suspension or revocation and the ground thereof."

This Court held seventy-five years ago that a statute giving a state commission power to establish *reasonable* rates without a hearing was void because:

> "the element of *reasonableness* both as regards the company and as regards the public is a question for judicial investigation requiring due process,"

Chicago M. St. Paul Ry. v. *Minnesota,* 134 U. S. 418, 10 S. C. Rep. 462-467.

Hence a rule as broad as, and founded on, such statute is equally invalid. *Morgan* v. *United States* (1938), 304 U. S. 1, 58 S. C. Rep. 773.

Section 32 merely provides that after suspension a license can be restored. The Appellate Division justified the suspension on the ground that the restoration was on condition (p. 22):

> "that if you are again convicted for a violation, your driver's license will be suspended forthwith."

Whether or not the Division of Motor Vehicles can issue conditional licenses, no such condition can deprive the licensee of constitutional due process without a prior hearing unless there is imminent danger.

Double Jeopardy

The point rule, based on NJS 39:5-30, merely provides additional arbitrary punishment for past convictions regardless of the circumstances.

The New Jersey Supreme Court held in *Cresse* v. *Parsekian* (*supra*) that while license suspensions are designed mainly to protect the public by removing offenders (p. 328):

> "they undoubtedly have punitive incidents."

In that case, there had been no prior conviction under NJS.39:5-31 on the violation (39:4-144) on which the suspension was based, and hence no question of double jeopardy.

In this case, the opinion held that the petitioner (p. 23):

> "is bound by the record of conviction under the point system."

Under the doctrine of double jeopardy, the State is also bound. With respect to each prior conviction the State had an opportunity to seek as additional punishment a suspension under NJS 39:5-31. If the State failed to seek it or

was unsuccessful in obtaining it, the State is also bound by the conviction.

Section 39:5-30 cannot be construed to mean that the State can have a second free chance to suspend without a hearing merely because of former convictions, if at the trials which resulted in the convictions, the State, under Section 39:5-31, failed to seek a suspension or failed to prove that a suspension was warranted.

In this case, the "quasi crime" was committed in New York and punished in New York. To punish again in New Jersey solely for the New York conviction is clearly double jeopardy.

It is believed that the Fifth Amendment double jeopardy clause applies to the states under the Fourteenth Amendment in view of recent decisions. This has been so held by the Supreme Court of New Jersey in *State* v. *Farmer* (1966), 48 N. J. 145, page 168.

Judgment and Record

The only judgment under the New Jersey procedure is the opinion of the Appellate Division ,which holds that the suspension order is affirmed. (p. 24).

Nine copies of the petitioner's brief, including appendix record and reply brief will be submitted with this petition.

CONCLUSION

For the foregoing reasons, petitioner prays that this writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

Opinion of the Appellate Division

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-1191-65

JOHN E. RING,

Appellant,

vs.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

Argued February 14, 1967—Decided March 8, 1967.

Before Judges Goldmann, Kilkenny and Collester.

On appeal from decision of Director of Motor Vehicles.

Mr. Carl E. Ring argued the cause for appellant.

Mr. Jeffrey R. Lowe, Deputy Attorney General, argued the cause for respondents (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

PER CURIAM

On June 27, 1966 the Director of the Division of Motor Vehicles summarily suspended the driving privileges of John E. Ring for three months, effective July 2, 1966, stating as the reason in the notice of suspension:

> "PERSISTENT VIOLATOR—You have again been convicted after restoration with distinct understanding.

> Subsequent conviction in the New York Court as a result of a failure to keep right violation on October 25, 1965."

Ring appealed to the Appellate Division from that suspension order pursuant to *R.R.* 4:88-8. His notice of appeal, dated July 22, 1966, was filed on July 25, 1966.

Ring earned his livelihood as a truckdriver and needed his driver's license to work. He consulted Senator Musto, who is also an attorney, so that he might not be deprived of his driver's license while challenging the order of suspension. It was, and still is, Ring's position that the suspension was improper because it was ordered without first giving him a hearing. The Senator conferred with the Assistant Director of the Division. Ring was advised to write a letter requesting a hearing, so that he could explain the circumstances surrounding the October 1965 violation in the State of New York. He did so on June 30, 1966 and a hearing was scheduled for July 27, 1966. Ring was so notified by letter of July 21, 1966.

There was some misunderstanding as to whether Ring might drive a motor vehicle pending the hearing. Ring understood from his conversation with the Senator, following the latter's conference with the Assistant Director, that he might do so. There is implicit in a letter which the Assistant Director wrote to Ring on July 20, 1966 that such an assurance had been given. Thus the Assistant Director wrote, *inter alia*:

> "Senator Musto assumed that this [the request for a hearing] meant that you could continue to operate a motor vehicle until such time a hearing could be scheduled and so advised you. I assumed that there was sufficient time left prior to date of your suspension for this Division to schedule the hearing and so advise you.

It appears that this misunderstanding has placed you in an embarrassing position in that you were charged with 'Driving on the Revoke List'. It is suggested that you present this letter to the Magistrate so that he may know the true facts surrounding the situation.

I am sincerely sorry that this misunderstanding did occur."

Because of that misunderstanding and assuming that he might still exercise his driving privileges pending the hearing, Ring drove a truck on July 9, 1966 in Rutherford, New Jersey, and was arrested for driving while on the list of suspended drivers. Trial of the municipal court action has been postponed pending the determination of this appeal.

The hearing in the Division was conducted as scheduled on July 27, 1966. Ring's attorney attended and presented a lengthy affidavit in which Ring set forth in detail his position, including his explanation of the New York incident. He had driven his truck from the right eastbound lane into the left eastbound lane because he intended to make a left turn at the intersection and deemed his driving maneuver compatible with safe driving. He had pleaded guilty and paid a $10 fine. (He now states in his brief that he paid the fine "because to contest the ticket with a lawyer would cost in excess of $100.") He further alleged that he had driven several thousand miles during the eight months between the New York incident and the date of the suspension order without causing an accident and without having caused personal injury or property damage to anyone. He urged that "the violation in New York October 25, 1965 was not such as would warrant any suspension."

The record does not show any objection by Ring to the administrative hearing and, of course, he requested and

participated in the hearing by offering the statement referred to above. He did aver in that statement:

> "'I am attending this hearing July 27 to reduce the suspension and regain my license without waiving my claim that the suspension order was void. For the same reason I, in good faith, retained my license and surrender it herewith without waiving right of appeal."

On September 8, 1966 the Division of Motor Vehicles notified Ring that, "after careful consideration of all factors developed during the course of the hearing," his application for a reduction of the period of suspension had been denied.

Ring filed no notice of appeal from the order made by the Division of Motor Vehicles on September 8, 1966, following the hearing. The only notice of appeal filed by him was that of July 25, 1966, which was addressed solely to the summary suspension order of June 27, 1966. Ring claimed that order was invalid because no hearing had been accorded him before it was made. Therefore, the only appeal properly before us is that relating to the June 27, 1966 order which was issued without a hearing. In a supplemental memorandum filed by Ring subsequent to oral argument, he concedes this.

If the failure to conduct a hearing before issuing the June 27, 1966 order made it fatally defective, that would have some relevancy in the pending municipal court action. However, any such deficiency would not alter the fact that Ring was ultimately given a hearing requested by him and on the basis of that hearing an order was made on September 8, 1966, confirming the three months' suspension of driving privileges and Ring has not appealed from that order.

Ring now argues that the Division of Motor Vehicles was without jurisdiction to conduct a hearing because of the pendency of his appeal in the Appellate Division. There are two answers to this argument. First, the record is barren of any recital that Ring objected to the hearing before the Division on this ground. Secondly, he participated in the hearing on the merits of the case through his attorney, after having expressly requested it. He advanced, as he believed, valid reasons why the New York violation did not warrant the suspension. He requested a reduction of the suspension period. Ring cannot now be heard to say that his driving privileges were suspended by the Division of Motor Vehicles without a hearing. He had a hearing. And his failure to appeal from the order based thereon precludes any challenge to the propriety thereof.

Moreover, there was sufficient substantial evidence to support the actions taken by the administrative agency. As to the June 27, 1966 summary order of suspension, Ring's driving record justifies the reference to him as a "persistent violator." His driver's license had been suspended on August 29, 1963 as a persistent violator under the "point system." It was restored on February 29, 1964. Within three months thereafter, on May 25, 1964, he was convicted of careless driving in Rutherford. On September 3, 1964 he was found guilty of speeding in Clifton, New Jersey. On September 28, 1964 his driver's license was suspended by the Division of Motor Vehicles for three months for the careless driving in Rutherford and for an additional month for the speeding in Clifton. On October 7, 1964 he was convicted of driving while on the suspended list. This resulted in a further six months' suspension.

On July 30, 1965, after this cumulative 10-months' suspension had elapsed, Ring's driver's license was restored

to him "with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be suspended forthwith." Within three months of the restoration, the New York violation occurred. On the basis of this conviction, the Division's "point system" regulations, providing restoration subject to suspension forthwith for a new violation, became operative. Such regulations are not an unreasonable exercise of the power vested in the Division of Motor Vehicles. *N.J.S.A.* 39:5-30 and 32. The particular regulation provides:

> "Restoration after suspension or official warning * * * shall be with the express condition and understanding that conviction of any violation of the motor vehicle laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods:
>
> (a) When the violation occurred within six months of the date of action—three months."

When the new violation occurs after six months but within nine months, the period of suspension is two months; and when after nine months but within one year, one month.

Such a conditional restoration, subject to summary suspension for the prescribed limited period for a new violation occurring shortly after restoration, is not an unreasonable exercise of the administrative function. The "point system" is a serious, intelligent and constructive attempt to promote traffic safety in this state. *District of Columbia* v. *Jones,* 183 A.2*d* 391 (*D. C. Mun. Ct. App.* 1962). Ring's guilty plea to the New York violation within three months of the restoration of his driver's license made the "point system" regulation applicable.

Due process does not necessarily require in every instance a hearing before action taken by an administrative agency. It is enough if hearing is afforded within a reasonable time after action taken. 1 *Cooper, State Administrative Law* (1965), *C. I.* § 2, *p.* 139 and § 4, *p.* 143. Where, in the administrative agency's judgment, the protection of the public requires the immediate cessation of activities under the license, the agency should have and exercise the power to order "summary *suspension* of the license pending an opportunity to the licensee to be heard on the question whether his authority should be permanently *revoked.*" *Gellhorn and Byse, Administrative Law—Cases and Comments, pp.* 764-765; *Bechler* v. *Parsekian,* 36 *N. J.* 242, 257 (1961). Ring was certainly given due notice, when his driver's license was restored, that his driving privilege would be *suspended* forthwith upon conviction of a new violation. He knew of that condition when he pleaded guilty to the New York violation. He is bound by the record of conviction under the "point system". *Tichenor* v. *Magee,* 4 *N. J. Super.* 467 (App. Div. 1949). Moreover, he was given a hearing within one month of the summary suspension to show, if he could, why the period of suspension was not warranted. We find no basis for disturbing the administrative findings.

We are not required by this appeal to decide whether Ring violated the law on July 9, 1966 when he drove a truck in Rutherford. It seems clear that he was of the honest belief that the Assistant Director of Motor Vehicles had authorized his continuing to drive pending the hearing to be held. The Assistant Director's letter of July 20, 1966 frankly admits the "misunderstanding" which his conversation with the Senator had generated. His suggestion that Ring present his letter to the municipal magistrate—"so that he may know the true facts surrounding the situation"—implies that Ring ought not to be sub-

jected to any penalty by reason of the July 9th incident. A dismissal of that complaint, while not directed by us, would appear to be warranted in the interest of substantial justice.

We are not unmindful of the substantial financial loss suffered by a truckdriver in having his driving privileges suspended. We note a bill pending in the Legislature, A-263, which would limit the suspension to non-occupational driving.

The order under review is affirmed.

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	3
CONSTITUTIONAL PROVISIONS, STATUTE AND REGULATIONS INVOLVED	3
STATEMENT OF THE CASE	5
ARGUMENT	8
CONCLUSION	11
APPENDIX:	
Notice of Restoration of New Jersey Driving Privileges	1a

Cases Cited

Armstrong v. Manzo, 380 U. S. 545 (1965)	9
Atkinson v. Parsekian, 37 N. J. 143 (1962)	10
Bechler v. Parsekian, 36 N. J. 242 (1961)	9
Cresse v. Parsekian, 81 N. J. Super. 536 (App. Div. 1963)	10
District of Columbia v. Jones, 183 A. 2d 391 (D. C. Mun. Ct. 1962)	8
Kantor v. Parsekian, 72 N. J. Super. 588 (App. Div. 1962)	9
Tichenor v. McGee, 4 N. J. Super. 467 (App. Div. 1949)	9

PAGE

United States Constitution Cited

Fourth Amendment 3, 4, 10

Fifth Amendment 3, 4, 10

Eighth Amendment 3, 4

Fourteenth Amendment 3, 4

Statutes Cited

New York Traffic Code 7

N.J.S.A. 39:3-40 7

N.J.S.A. 39:4-98(c) 7

N.J.S.A. 39:5-30 ..... 4, 5, 10

Rule Cited

R.R. 1:7-1(c) 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1374

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

BRIEF FOR RESPONDENTS, JUNE STRELECKI, DIRECTOR OF MOTOR VEHICLES AND STATE OF NEW JERSEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Appellate Division of the Superior Court of the State of New Jersey is unreported and is printed in Petitioner's appendix 17-24 (hereinafter cited as "P-a"). A petition for certification to the Supreme Court of New Jersey was filed and was denied by order of that court on May 2, 1967. No petition for rehearing to the New Jersey Supreme Court was made by the Petitioner.

Jurisdiction

Recent action by the Director of the Division of Motor Vehicles rends the within petition moot. In essence, Petitioner is contesting the suspension of his driving privileges by the Division of Motor Vehicles for having been a "persistent violator" under the "Point System Regulations" governing New Jersey licensed drivers. Under these regulations, a licensee who has accumulated twelve or more points, within a three year period of time, shall have his driving privileges summarily suspended for three months when a subsequent violation occurs within six months after restoration or official warning or warning after successfully completing a driver improvement course. Prior to an amendment to these regulations, the violation which was the triggering mechanism for this automatic suspension where the license has been conditionally restored to the licensee could occur in sister states as well as in New Jersey. The amendment to the regulation deletes a violation occurring in a sister state from consideration.

The violation which caused the Petitioner herein to be considered a "persistent violator" occurred in New York. Because of this express change in policy by the Division of Motor Vehicles, *i.e.*, eliminating out of state motor vehicle violations from the "persistent violator" regulations, it was felt that to continue Petitioner's suspension of his driving privileges would be contrary to the Division's policy and no useful purpose would be served thereby. To this end, the Director of the Division of Motor Vehicles has amended her order of suspension limiting it to the time during which the Petitioner has been without his driving privileges (approximately seven weeks) for the violation *sub judice*. As a result of this action, it is submitted that this petition is mooted for all practical purposes since the Petitioner presently has and will continue to have his driving privileges in New Jersey. (See Respondent's Appendix R1a, R2a)

A further objection to this Court's exercise of jurisdiction must also be noted. Petitioner has not timely raised the spectre of constitutional issues which he now requests this Court to review. Except for the double jeopardy issue, the other constitutional questions were not submitted to the appellate tribunal in New Jersey. They were raised for the first time in the petition for certification addressed to the New Jersey Supreme Court, which petition was denied by that court. The failure to raise constitutional issues in a timely fashion has always been a basis for this Court to deny *certiorari* and it should be applicable herein.

Questions Presented

1. Whether a Petition for a Writ of Certiorari should be granted where constitutional questions are not timely raised in the State court proceedings.

2. Whether a Petition for a Writ of Certiorari should be granted where the Petitioner has been administratively afforded the same relief which he now seeks from this Court.

3. Whether the action of the Division of Motor Vehicles, which afforded Petitioner a hearing following a suspension of his driving privileges for three months as a persistent violator where his driver's license had been conditionally restored to him, contravenes the unreasonable seizure, double jeopardy, unusual punishment, due process and equal protection provisions provided in the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

Constitutional Provisions, Statute and Regulations Involved

This case purportedly involves the unreasonable seizure, double jeopardy, unusual punishment, due process and

equal protection provisions as contained in the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

The New Jersey statutory provision, N.J.S.A. 39:5-30, which is involved herein, states in pertinent part:

> "Every registration certificate and every license certificate to drive motor vehicles may be suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, and the reciprocity privilege of any nonresident may be suspended or revoked by the commissioner for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof."

The Point System Regulation of the New Jersey Division of Motor Vehicles, which is drawn in question here, provides:

> "Restoration after suspension or official warning, or warning after successfully completing a Division Driver Improvement School Course following accumulation of twelve or more points shall be with the express condition and understanding that conviction of any violation of the motor vehicle laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods:
>
> (a) When the violation occurred within six months of the date of action ..... three months;
>
> (b) When the violation occurred after six months but within nine months of the date of action ..... two months;

(c) When the violation occurred after nine months but within one year of the date of action ..... one month."*

Statement of the Case

This matter involves a Petition for a Writ of Certiorari to the Appellate Division of the New Jersey Superior Court by Petitioner, John E. Ring, from an affirmance by that court of the order of the Division of Motor Vehicles, suspending Petitioner's driver's license for a period of three months as a "persistent violator" by virtue of the authority of N.J.S.A. 39:5-30 and regulations adopted pursuant thereto. Petitioner's driving privileges were suspended for a period of three months as a persistent violator effective July 2, 1966, and subsequently on August 19, 1966, the suspension was stayed pursuant to an order of the Superior Court, Appellate Division, upon application of the Petitioner pending disposition of the appeal before that court. Of the period of suspension initially imposed upon the appellant, 42 days was not served. The remainder of the suspension period has been eliminated by the Director of the Division of Motor Vehicle and Petitioner's driving privi-

---

* As indicated *infra*, this section of the "persistent violator" regulation was amended effective July 12, 1966 to delete violations occurring in other states from consideration. This portion of the regulation now reads in pertinent part, as follows:

> "Restoration after suspension or official warning, or warning after successfully completing a Division Driver Improvement Course following accumulation of twelve or more points shall be with the express condition and understanding that any violation of the motor vehicle laws of New Jersey committed within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods . . . ."

leges have been fully reinstated. (See argument under *Jurisdiction* point and Respondent's Appendix).

Petitioner claims that there had been three prior equally illegal summary suspensions imposed by the Division of Motor Vehicles as a result of traffic violations (Pb6). Petitioner's assertion of illegality is distorting and should be clarified for the benefit of this Court. To that end, an illumination of the interrelationship between the Point System regulation and persistent violator subsection must be presented.

The history of Petitioner's motor vehicle violations and accidents prior to the September 28, 1964 suspension were not included in the record on the appeal. However, prior to the suspension in September 1964, the Petitioner had accumulated sufficient points (at least twelve) to bring the persistent violator's provision into play. Thus, the suspensions, from September 1964 to June 1966, were all triggered by a subsequent violation after a period of suspension had been served by Petitioner because of an accumulation of traffic points. After each period of suspension, the driver's license was conditionally restored to the Petitioner. Each notice of restoration had the following condition on it:

> "This restoration is with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be suspended forthwith."

In September 1964, Petitioner's driving privileges were suspended as a result of a May 25, 1964 moving violation (P21a). Subsequently, the period of suspension was extended another month because of a September 3, 1964 speeding conviction wherein Petitioner was guilty of speeding

64 miles an hour in a 50 mile per hour zone in violation of N.J.S.A. 39:4-98(c) (P21a). During this period of suspension, on October 7, 1964, Petitioner was issued a summons for driving while on the revoked list in violation of N.J.S.A. 39:3-40 (P21a). This period of suspension was extended an additional six months for this violation (P21a). On July 30, 1965, Petitioner's driver's license was restored to him (P21a to P22a). The notice of restoration contained the same condition which obtained upon the return of his license as on prior occasions (P22a).

On October 25, 1965, Petitioner was convicted in a New York Court for a violation of the New York Traffic Code for failure to keep to the right (P22a). His driver's license was suspended on July 2, 1966 as a persistent violator in accordance with the regulation and warning on his notice of restoration. Because of a change in policy resulting in the elimination of out of state violations for purposes of triggering the persistent violator regulation, the Director of the Division of Motor Vehicles has deemed it appropriate to amend her order of suspension to permit the period heretofore served as satisfying the suspension. Thus, the matter at bar has been mooted for all intents and purposes.

Nevertheless, it is quite evident from the foregoing that Petitioner was not unfamiliar with the various rules and regulations of the Division of Motor Vehicles. In addition, he has had several conditional restorations of his license prior to the incident of which he complains. It is in this context that Petitioner is claiming that his constitutional rights have been abridged by a summary suspension of his driving privileges.

Argument

As permitted by the rules of this Court, argument relating to the jurisdiction of this Court is embraced under the jurisdictional point in this brief. In this regard, it is submitted that there are substantial reasons why this Court should deny the within Petition for Writ of Certiorari. First, no relief to the Petitioner can be provided by this Court which has not already been afforded by the Director of the Division of Motor Vehicles. In effect, the amended order of suspension, reducing the period to the time already served, moots the case (R1a, R2a). Second, all of the constitutional issues were not timely presented in the State court proceedings. In this connection, it is interesting to note that the Petitioner, in his petition for certification in the New Jersey Supreme Court, included a mandatory statement pursuant to New Jersey Rules of Court, R.R. 1:7-1(c), which is required when the questions involved include those which were not presented to the court below (Compare Pb7).

Although Respondent contends that the jurisdictional basis for this Court to grant *certiorari* is absent in this case, it should not thereby be inferred that the Respondent considers the Petitioner to have been unconstitutionally treated. On the contrary, it is strongly maintained that the regulation of the Division of Motor Vehicles which permits a summary suspension of driving privileges is constitutional in all respects.

As the Appellate Division of the Superior Court indicated, the Point System is a serious and intelligent and constructive attempt to promote traffic safety in this State. P22a; see also *District of Columbia* v. *Jones*, 183 A. 2d 391 (D. C. Mun. Ct. 1962). By employing the process of court proceedings to find a man guilty or innocent, the licensee

has every appropriate constitutional safeguard, and the subsequent administrative invocation of a suspension based on a history of traffic violation convictions is a reasonable way to promote traffic safety on the roads of the State. The suspension, of course, presumes that the license shall be restored after the period of suspension, and this is distinguishable from the more serious permanent revocation. *Compare generally Bechler* v. *Parsekian,* 36 N. J. 242 (1961), *with Kantor* v. *Parsekian;* 72 N. J. Super. 588 (App. Div. 1962). See also, *Tichenor* v. *McGee,* 4 N. J. Super. 467 (App. Div. 1949). The suspension only comes about after the licensee has shown himself to be a poor driver and a menace to the other drivers and pedestrians of the State. The suspension is also designed to aid the licensee by encouraging him to avail himself of an opportunity during the period of suspension to participate in a driver improvement program.

In the case *sub judice,* the Petitioner had had much experience with the ways of the Division of Motor Vehicles and had previously been advised on several occasions that his license was conditionally restored, as well as being once again notified of his conditional restoration on July 30, 1965. Petitioner violated the known terms of his conditional restoration by his New York motor vehicle violation, and on July 2, 1966 his conditional restoration was terminated and his driving privileges were suspended. [Contrast the knowledge of the Petitioner herein with that of the natural father who had no inkling of the adoption proceedings in *Armstrong* v. *Manzo,* 380 U. S. 545 (1965), the case principally relied upon by this Petitioner (Pb9; Pb11).] In addition, there was a hearing held by the Division after the final suspension, at which hearing the three-month suspension was upheld. Reviewing the record, it is difficult to see how Petitioner in fact was denied due process.

The charge that the Petitioner has been placed in double jeopardy has already been disposed of by the New Jersey courts.

In *Atkinson* v. *Parsekian*, 37 N. J. 143, 155 (1962), the New Jersey Supreme Court held that an administrative revocation of a driver's license is not punitive in purpose and hence does not involve double jeopardy. "The primary object of [N.J.S.A. 39:5-30] is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." *Id.* at p. 155. See also, *Cresse* v. *Parsekian*, 81 N. J. Super. 536 (App. Div. 1963).

Petitioner's further contention that his license has been unreasonably seized in violation of the Fourth Amendment is substantially the same as his arguments based on due process of the Fifth and Fourteenth Amendments. The Division of Motor Vehicles had good cause and reasonable grounds to suspend Petitioner's driving privileges. Petitioner, although his license was conditionally restored to him, defaulted on the basic condition by being involved in another violation. To suspend summarily his license privileges where he has already had a second chance is no affront to our notions of due process of law and does not constitute an unreasonable seizure of his privilege to drive.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Respondents.

ALAN B. HANDLER,
First Assistant Attorney General,
Of Counsel.

ALAN D. KIRBY,
Deputy Attorney General,
RICHARD NEWMAN,
Deputy Attorney General,
On the Brief.

[APPENDIX FOLLOWS]

APPENDIX

State of New Jersey
Department of Law and Public Safety
Division of Motor Vehicles
Driver Control Service
25 So. Montgomery St.
Trenton, N. J. 08625

June 6, 1967

To: John E. Ring
97 Ridge Road
Rutherford, New Jersey

Date of Birth: 8-42 Eye Code: 4 Sex: M Effective Date of Suspension: 7-2-66 Susp. Code: P Reason: 733 Date of Restoration: 8-19-66 Rest. Code: Y Always Refer to Your Case File and Driver License No.: R4486 40765 08424 Expiration Date: 9-66

Notice of Restoration of New Jersey Driving Privileges

New Jersey Resident

X This restoration covers your New Jersey automobile, motorcycle and all other driving privileges.

Non-Resident

This restoration covers your reciprocity driving privileges in New Jersey.

Reason for Suspension:

Persistent Violator—You have again been convicted after restoration with distinct understanding.

Notice of Restoration of New Jersey Driving Privileges

Subsequent conviction in the New York Court as a result of a failure to keep right violation on October 25, 1965.

Period of Suspension: Effective July 2, 1966 and 3 Months from the date your driver license is received at this office.

Your driving privilege in New Jersey is restored subject to the following conditions: This restoration is with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be revoked forthwith. Your driver license privilege was restored in accordance with court order (Appellate Division Docket No. A1191-65 dated August 19, 1966) pending appeal. At that time forty-eight (48) days of the three (3) month suspension period which had been imposed under the Persistent Violator Regulation was served.

This restoration applies only to the action covered by this notice and has no effect on any other suspension or pending action. By direction of the Director the three (3) month period of suspension is reduced to that period forty-eight (48) days already served.

JUNE STRELECKI
Director

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. [redacted]146

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

CARL E. RING,
1701 Palisade Avenue,
Union City, New Jersey,
Attorney for Petitioner.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

TABLE OF CONTENTS

	PAGE
Jurisdiction	2
The Case Is Not Moot	3
A hearing after suspension is not sufficient	6
Conclusion	6
Respondents' Attorney's Letter of May 24, 1967	7

CASES CITED

Armstrong v. Manzo, 380 U. S. 545, 85 S. C. Rep. 1187	6
Bechler v. Parsekian, 36 N. J. 242, 257	6
B & Q Railway v. Chicago, 166 U. S. 227, 17 S. C. Rep. 581	3
Liner v. Jafco, 375 U. S. 301, 84 S. C. Rep. 391	5
Love v. Griffith, 266 U. S. 32, 45 S. C. Rep. 12	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1374

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

The brief of the respondents in opposition to the petition presents:

1. A question of JURISDICTION on the ground that the constitutional questions were not timely raised, and;

2. A claim that the case is MOOT because of action taken by the Division of Motor Vehicles since the filing of this petition.

Jurisdiction

Respondents contend that, except for double jeopardy, the other constitutional questions were not submitted to the Appellate Division but were raised for the first time in a petition to the Supreme Court of New Jersey, which was denied.

Point One in petitioner's brief in the Appellate Division (p. 6) was:

> "THE SUSPENSION ORDER ISSUED WITHOUT AND PRIOR TO A HEARING DENIED DUE PROCESS AND IS VOID."

Point Three in the brief (p. 7) argues:

> "The July 27th hearing after suspension is not a substitute nor equivalent to a due process hearing to first determine the Director's right to suspend."

The opinion of the Appellate Division shows at pages 20 and 23 in the petition that both of these questions were decided against the petitioner, the Court stating:

> "Due process does not necessarily require in every instance a hearing before action is taken by an administrative agent."

The questions of illegal seizure and unusual punishments were first raised in that form in the Supreme Court of New Jersey, which is allowable under Rule 1:7-1 (c), which provides:

> "If the questions involved include any not presented to the Court below this fact should be noted."

The fact was noted in compliance with the rule by the following mandatory statement at page 4 of the petition to that Court:

> "The questions on the foregoing page were not presented to the Appellate Division as specifically involving questions arising under the Constitution of the United States, but they were all presented in terms of general law."

The questions were then presented to this Court in exactly the same form as presented to the Supreme Court of New Jersey.

This complies with the requirements of this Court which held in Chicago *B & Q Railway* v. *Chicago*, 166 U. S. 227, 17 S. C. Rep. 581, that it is sufficient if it appears from the record that the federal question was raised in the State Court:

> "in such manner as to bring it to the attention of that Court."

In that case, the federal question was first raised on a motion for new trial, which was denied.

By this procedure, the petitioner assured that the highest Court in New Jersey had an opportunity to and was requested to rule on the constitutional questions exactly in the same form as presented to this Court in this petition.

The Case Is Not Moot

The respondents' brief states (p. 2):

> "Recent action by the Director of the Division of Motor Vehicles rends the within petition moot."

The petitioner's license was suspended for three months June 27, 1966 for a $10 traffic violation in New York.

Now comes the respondent, and states (p. 5) that the point rule was amended effective July 12, 1966:

"to delete violations occurring in other states from consideration."

That was the first notice to the petitioner of the change in regulations.

Notwithstanding such change, the Assistant Director on July 20, 1966 ordered a hearing and ordered that the petitioner could not drive in the meantime (Ex. 4 in petitioner's Appellate Division brief and appendix) and thereafter on September 8, 1966 (Ex. 10) the Division of Motor Vehicles affirmed that the three-month suspension was "fair and warranted."

The Appellate Division stayed the suspension August 19, 1966. The record does show that that Court had notice of the change in the regulations and on March 8, 1967 sustained the three-month suspension for the New York violation as reasonable under the point rule and denied a formal motion for a stay pending the petition to this Court.

The Director can, under this decision, reinstate the rule at her will.

Though the petitioner had sought by every means possible in the Motor Vehicle Bureau and in all the Courts of New Jersey to have the suspension set aside or reduced, it was not until after this petition was filed and an application was made to Mr. Justice Brennan for a stay that the respondents gave notice of the change in the rule "effective" July 12, 1966 and decided to cancel the remaining six weeks suspension.

This was not done in recognition of due process or other constitutional rights but solely as an expedient, in the hope that it would avoid a ruling on the questions presented. This is shown by the respondents' attorney's letter of May 24, 1967 to the Clerk of this Court, printed herein.

The petitioner has not obtained administratively the:

"same relief which he now seeks from this Court."

The petitioner seeks a ruling to set aside a summary suspension, a practice of the respondents, which has cost the petitioner several thousand dollars and nearly seventeen months suspension in the last three years, and the six weeks suspension cancelled was only a part of the relief prayed for. The petitioner and all other licensees are still subject to the "summary" rules which are made and invoked at the arbitrary will of the Director. The respondents' brief (p. 8) contends that the petitioner has not:

> "been unconstitutionally treated,"

but affirms:

> "On the contrary, it is strongly maintained that the regulation of the Division of Motor Vehicles which permits a summary suspension of driving privileges is constitutional in all respects,"

and (p. 10) that:

> "The Division of Motor Vehicles had good cause and reasonable ground to suspend petitioner's driving privileges,"

even though the rule was changed a few days later.

Mootness is a question for this Court and this case comes squarely within *Liner* v. *Jafco*, 375 U. S. 301, 84 S. C. Rep. 391, which distinguishes *Love* v. *Griffith*, 266 U. S. 32, 45 S. C. Rep. 12.

In that case, an injunction pertaining to a special rule for a specal election had been denied and the case reached this Court after the election, so that it was impossible to grant the injunction, the only relief prayed for. Here, the relief prayed for is to set aside a suspension and a judgment affirming that suspension because it denied due process and other constitutional rights and because the judgment on the record extends into the future, as in *Liner* v. *Jafco*.

It is the law of the State to govern the right of petitioner and all other licensees in the future and the several illegal summary suspensions have greatly increased petitioner's insurance rates and created unfavorable presumptions against him on his motor vehicle record.

A hearing after suspension is not sufficient.

An automobile license is property:

"which may not be taken away except by due process." *Bechler* v. *Parsekian*, 36 N. J. 242, 257.

The real question is whether a hearing by the Director, under any arbitrary rules she chooses to make, one month after suspension, where there was no imminent danger, and a decision several weeks later and usually after the suspension expires is due process.

This issue is clearly stated in the question presented for review (Question 2 by the petitioner and Question 3 by the respondents) and is squarely covered by *Armstrong* v. *Manzo*, 380 U. S. 545, 85 S. C. Rep. 1187.

CONCLUSION

Petitioner prays that this writ of certiorari be granted.

Respectfully submitted,

Carl E. Ring,
Attorney for Petitioner, John E. Ring,
1701 Palisade Avenue,
Union City, New Jersey.

Respondents' Attorney's Letter of May 24, 1967

COPY

STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY

May 24, 1967

Mr. E. C. Schade, Assistant Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Ring v. Strelecki, etc., et al.

No. 1374, O. T. 1966

Dear Mr. Schade:

This is in reply to your letter of May 22, 1967 and in confirmation of my telephone conversation with Mr. Rodak of your office on May 24, 1967. This is to advise you that the respondents, Director Strelecki of the Division of Motor Vehicles and the State of New Jersey, have no objection to the petitioner's, John E. Ring, application for a stay pending disposition of the petition for a writ of certiorari in the captioned matter.

This is to further apprise you of the fact that such stay may be unnecessary in that the Director of the Motor Vehicle Division intends to amend and revise her order suspending the petitioner's driving privileges for three months by reducing the suspension to the period of time heretofore already incurred. The petitioner presently has the use of his driver's license and will continue to have such usage since no action to recall his license is contemplated for the violation involved herein in view of the treatment to be accorded the petitioner by the Director. The brief to be filed in opposition to the petition

for a writ of certiorari by the respondents will elaborate on the Director's action and will demonstrate that the cause will consequently be mooted.

I trust that this letter will serve as an appropriate response setting forth the respondents' position in connection with the petitioner's application for a stay pending disposition of the petition for a writ of certiorari.

Respectfully yours,

/s/
RICHARD NEWMAN
Deputy Attorney General

RN:fg
cc: Carl E. Ring